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S.T., Appellant)	
)	
and)	Docket No. 10-1804
)	Issued: April 15, 2011
TENNESSEE VALLEY AUTHORITY,)	
PARADISE STEAM PLANT, Drakesboro, KY,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On June 29, 2010 appellant, through his representative, filed a timely appeal from the April 23, 2010 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of his pulmonary claim. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

The issue is whether appellant sustained a pulmonary injury in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In the prior appeal,² the Board set aside the denial of appellant's claim and remanded the case for a supplemental report from Dr. Manoj H. Majmudar, a Board-certified specialist in pulmonary disease and impartial medical specialist. The Board noted that the statement of accepted facts did not adequately address the level of appellant's exposure to coal dust or asbestos in the course of his federal employment. The Board directed the Office to make findings of fact on whether and to what extent appellant was exposed to gasoline fumes. Given appellant's objection that Dr. Majmudar was not a certified B-reader, the Board noted that the Office should consider whether it would be helpful to authorize Dr. Majmudar to consult a certified B-reader. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.³

The Office further developed the evidence on appellant's exposure. It prepared an addendum to the statement of accepted facts incorporating this evidence and asked Dr. Majmudar for a supplemental report. The Office asked him to use more definite language and to utilize a certified B-reader in order to support his conclusion in this case.

Dr. Majmudar related appellant's history and complaints. He summarized appellant's occupational history, including significant exposure to coal dust and exposure to gasoline fumes and asbestos "to some extent." Dr. Majmudar described findings on physical examination, chest x-ray and pulmonary function testing. He stated:

"61-year-old [appellant] presented with shortness of breath. [His] physical examination is consistent with morbid obesity [324 pounds] and mild expiratory wheeze. Venous stasis in the right leg and a small amount of edema. [Appellant's] pulmonary function test shows mild obstructive airway impairment, but no significant response to bronchodilator therapy. Diffusion capacity and lung volumes are normal. Chest x-ray shows hyperinflated lung, but no pleural plaque, pleural effusion, mass or any infiltrate noted. [Appellant's] shortness of breath is secondary to chronic obstructive lung disease and chronic bronchitis, secondary to cigarette smoking [1.5 packs per day for 46 years]. I also noted that [he] has had significant exposure to coal dust and there is some minimal asbestos exposure, but there is no evidence of asbestosis, pleural plaques or any pneumoconiosis on his physical examination or chest x-ray finding. I also noted that [appellant] has had exposure to gasoline fumes and the amount of exposure is small and that has not contributed to any significant airway impairment in [him]. In my opinion, [appellant's] symptoms are related to chronic obstructive airway impairment, secondary to cigarette smoking. No evidence of asbestosis or pneumoconiosis noted."

² Docket No. 08-1675 (issued May 4, 2009).

³ Appellant, a 58-year-old retired gas and diesel mechanic and machinist, filed an occupational disease claim alleging that his pneumoconiosis, chronic obstructive airway disease and chronic bronchitis were a result of exposure to coal dust and asbestos in his federal employment from 1976 to 1996.

In a decision dated October 30, 200, the Office denied appellant's claim for compensation. It found that Dr. Majmudar's opinion represented the weight of the medical opinion evidence and failed to substantiate that appellant sustained a pulmonary condition as a result of exposure in the course of his federal employment.

Appellant requested an oral hearing before an Office hearing representative. In a February 5, 2010 report, from Dr. William C. Houser, a Board-certified internist specializing in pulmonary disease and an A-reader since June 15, 1993, according to the Department of Labor's listing of A- and B-readers, diagnosed, pneumoconiosis, category 1, due to mixed dust exposure including coal dust and asbestos, as well as mild chronic obstructive pulmonary disease. He found that appellant had sufficient exposure and roentgenographic findings appropriate for the diagnosis of pneumoconiosis. Dr. Houser found that the restrictive changes on pulmonary function testing were probably secondary to obesity and pneumoconiosis. He added that the findings of airway obstruction were most likely secondary to inhaling respiratory irritants secondary to coal dust and asbestos as well as cigarette smoking.

On April 23, 2010 an Office hearing representative affirmed the denial of appellant's claim for compensation. The hearing representative found that Dr. Majmudar's opinion represented the weight of the medical evidence.

On appeal, appellant's representative argues that other physicians found a lung disease causally related to federal employment. He argues that Dr. Majmudar lacks qualification. Appellant's representative also argues that Dr. Majmudar initially attributed appellant's chronic obstructive airway impairment to smoking and exposure to gasoline, but after evidence supporting appellant's exposure to gasoline fumes, he did not attribute this condition to federal employment. Instead, he stated that the exposure was small and did not contribute to any "significant" impairment.

LEGAL PRECEDENT

The Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.⁵

Causal relationship is a medical issue⁶ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether

⁴ 5 U.S.C. § 8102(a).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁹

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁰ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.¹² Unless this procedure is carried out by the Office, the intent of section 8123(a) of the will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.¹³

ANALYSIS

The Office authorized Dr. Majmudar, the impartial medical specialist, to consult a certified B-reader. It requested him to: "Please utilize a certified B-reader in order to support your conclusion in this case." Dr. Majmudar did not oblige. The existence of pneumoconiosis is at issue. Appellant's pulmonologist, a certified B-reader, found it. The Office referral

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *See Morris Scanlon*, 11 ECAB 384, 385 (1960) (in which the claimant's physician concluded that the implicated conditions "could have had" a direct bearing upon his sickness).

⁹ *See William E. Enright*, 31 ECAB 426, 430 (1980) (finding no rationalized medical evidence, addressed to the particular circumstances under which the claimant worked, indicating that his disability was causally related to such employment factors).

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

¹² *See Nathan L. Harrell*, 41 ECAB 402 (1990).

¹³ *Harold Travis*, 30 ECAB 1071 (1979).

pulmonologist, who consulted a certified B-reader, was not convinced. To resolve the issue, Dr. Majmudar should have consulted a certified B-reader as requested.

Dr. Majmudar attributed appellant's chronic obstructive airway impairment mostly to cigarette smoking and exposure to gasoline fumes. However, in his supplemental report, he changed his opinion. Dr. Majmudar described appellant's exposure to gasoline fumes as "small" and not contributing to any "significant" airway impairment. The Board previously explained that causal relationship does not require that employment factors make a significant contribution to a medical condition.¹⁴

Medical conclusions unsupported by rationale are of diminished probative value.¹⁵ As Dr. Majmudar did not adequately explain why he no longer attributed appellant's airway impairment mostly to smoking and gasoline fumes, the Board finds that his opinion has diminished probative value and is not sufficiently rationalized to resolve the conflict in medical opinion evidence. As his supplemental report is insufficient, further development of the medical evidence is warranted.

The Office shall refer appellant, together with the medical record and the statement of accepted facts, to a new impartial medical specialist to resolve the conflict as to whether he sustained a pulmonary injury in the performance of duty. After such further development as may be necessary, it shall issue an appropriate final decision on appellant's claim for compensation.

Appellant's representative noted that physicians of record found a lung disease causally related to federal employment. As noted, a conflict in medical opinion arose with the Office referral pulmonologist, who disagreed and the mechanism provided by 5 U.S.C. § 8123(a) to resolve such conflicts.¹⁶ Appellant's representative argued that Dr. Majmudar lacks qualification, but the issue is moot as Dr. Majmudar failed to follow the Office's request to consult a certified B-reader. The Board agrees with counsel that Dr. Majmudar's opinion is not well rationalized, but this does not require acceptance of appellant's claim. Referral to a second impartial medical specialist instead warranted.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

¹⁴ *Beth P. Chaput*, 37 ECAB 158 (1985) (it is not necessary to prove a significant contribution of employment factors to a condition for the purpose of establishing causal relationship).

¹⁵ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹⁶ The opinion of a new pulmonologist, Dr. Houser, only reinforces the outstanding conflict; it does not resolve it.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: April 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board